

**UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF DELAWARE**

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DONGGUAN KIDSME INDUSTRIAL LTD.,	:	
	:	Civil Action No.:
Plaintiff,	:	
	:	
against	:	
	:	
MUNCHKIN, INC.	:	
	:	JURY TRIAL DEMANDED
Defendant.	:	
	:	
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**COMPLAINT**

Plaintiff, Dongguan Kidsme Industrial Ltd. (“Plaintiff” or “kidsme”), by and through its attorneys, White and Williams LLP, for its Complaint against defendant Munchkin, Inc. (“Defendant” or “Munchkin”) alleges, on knowledge as to its own actions, and otherwise upon information and belief, as follows:

**PRELIMINARY STATEMENT**

1. kidsme brings this action against Munchkin to seek remedies for Munchkin’s infringement of U.S. Patent No. 8,597,235 (“the ‘235 patent” or the “Asserted Patent”).
2. This action is the first complaint against Munchkin that kidsme has filed in this District. kidsme files this action to present allegations concerning, and to seek remedies for infringement of the ‘235 Patent.
3. Plaintiff seeks injunctive and monetary relief.

## **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) because this lawsuit is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 101 et seq.

5. This Court has personal jurisdiction over Munchkin consistent with the U.S. Constitution and 10 Del. Code § 3104. Upon information and belief, Munchkin has been a corporation incorporated in Delaware since 1993. Upon information and belief, Munchkin is the manufacturer, importer and/or seller of the Munchkin Silicone Baby Food Feeder (the “Accused Product”) via interactive websites run by retailers such as Amazon.com, ToysRus.com, Target.com, and Walmart.com. Residents of Delaware can order and purchase and, upon information and belief, have ordered and purchased Munchkin products from Munchkin or Munchkin’s affiliates, distributors or resellers via the Internet. Further, upon information and belief, Munchkin regularly does or solicits business in Delaware and derives substantial revenue from Munchkin services or products used or consumed in Delaware.

6. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c) and 1400(b) because Munchkin resides in this District and because a substantial part of the events or omissions giving rise to this claim occurred in this District.

## **PARTIES**

7. Plaintiff kidsme is a corporation organized and existing under the laws of China with a principal place of business at Building G, Changshi Technology Park, Liwu, Wusha, Chang’an Town, Dongguan City, China.

8. Defendant Munchkin is a corporation organized and existing under the laws of Delaware with a principal place of business at 7835 Gloria Avenue, Van Nuys, CA 91406.

## **FACTS**

### The '235 patent

9. The '235 patent, entitled "Feeding Apparatus," was issued by the United States Patent and Trademark Office ("USPTO") on December 3, 2013. A true and correct copy of the '235 patent is attached hereto as Exhibit A.

10. The application which led to the '235 patent was filed with the USPTO on February 26, 2010.

11. Pursuant to 35 U.S.C. § 119, the '235 patent claims priority to a Chinese patent application filed on March 10, 2009, and to additional Chinese patent applications filed in 2009.

12. kidsme is the sole owner of all right, title and interest in the '235 patent, including the right to bring this suit for injunctive relief and damages, via a duly executed and recorded assignment from the inventor, Fu Man Herman Lo.

### The kidsme Food Feeder Product

9. The kidsme Food Feeder is a feeding device designed to allow infant children, as young as four months old, to safely and independently consume food without the risk of choking. The product includes two primary parts, both of which are covered by the '235 patent. The first part includes a soft plastic nipple that acts as a food container for soft foods such as fresh fruit. The nipple has one or more strategically-placed holes that allow the infant to consume liquid and small bits of food. The food container is held in place by a hard-plastic circular element. The second part is a hard-plastic base with one or more handles. The first and second parts are connected, for example, by a hinge and locking mechanism. When the first and second parts are in the open position, the parent or caregiver can load food into the food container. When the first and second parts are in the closed position, the first and second parts fit together to eliminate

food spillage as the infant eats food via the nipple. A photograph of the kidsme Food Feeder is attached to this Complaint as Exhibit B.

10. The '235 patent number is, and at all times relevant hereto has been, marked on the kidsme Food Feeder and/or its packaging.

Acts Giving Rise to This Action

11. Photographs of the Accused Product are attached to this Complaint as Exhibit C.

12. As shown in Exhibit C, the Accused Product bears substantial resemblance to the kidsme Food Feeder product.

13. On information and belief, the Accused Product is manufactured based on manufacturing instructions communicated by Munchkin to one or more Munchkin employees or third party individuals or entities.

14. On information and belief, Munchkin manufactures or directs the manufacture of the Accused Product.

15. The Accused Product is on sale in the United States. A collection of internet websites showing the Accused Product available for shipment to U.S. consumers is attached hereto as Exhibit D.

16. On information and belief, Munchkin sells the Accused Product to retailers for resale to U.S. consumers, directly or through one or more third party distributors.

17. On information and belief, Munchkin sells the Accused Product to U.S. consumers.

18. On information and belief, Munchkin has sold the Accused Product after being put on actual notice of the '235 patent.

19. On information and belief, Munchkin imports, and/or directs the import of, the Accused Product into the United States.

20. On information and belief, Munchkin sells, to U.S. consumers, replacement parts specially adapted for use with the Accused Product.

21. The Accused Product contains each and every element of at least one claim of the ‘235 Patent.

**COUNT ONE  
(INFRINGEMENT OF U.S. PATENT NO. 8,597,235)**

22. kidsme incorporates by reference paragraphs 1-21.

23. On information and belief, e.g. via the conduct alleged herein, Munchkin has infringed, is still infringing, and is contributorily infringing, and/or inducing infringement of the ‘235 patent under 35 U.S.C. §§ 271 (a), (b), (c) and/or (g), directly and/or indirectly, literally or under the doctrine of equivalents, by activities including making, using, offering for sale and selling in the United States, and by importing into the United States, without authority, products and services including but not limited to the Accused Product.

24. Munchkin’s infringing activities have caused and will continue to cause kidsme irreparable harm, for which it has no adequate remedy at law, unless Munchkin’s infringing activities are enjoined by this Court in accordance with 35 U.S.C. § 283.

25. kidsme has been and continues to be damaged by Munchkin’s infringement of the ‘235 patent in an amount to be determined at trial, including lost profits and/or a reasonable royalty.

26. Munchkin’s infringement of the ‘235 patent is willful.

**PRAYER FOR RELIEF**

WHEREFORE, kidsme requests that:

(a) Judgment be entered that Munchkin has infringed one or more claims of the '235 Patent;

(b) Judgment be entered permanently enjoining Munchkin, its directors, officers, agents, servants and employees, and those acting in privity or in concert with them, and their subsidiaries, divisions, successors and assigns, from further acts of infringement, contributory infringement, or inducement of infringement of the '235 Patent, including but not limited to the manufacture, sale, import, or distribution of the Accused Product or any other infringing product;

(c) Judgment be entered awarding kidsme all damages adequate to compensate it for Munchkin's infringement of the '235 Patent including all pre-judgment and post-judgment interest of the '235 Patent including all pre-judgment and post-judgment interest at the maximum rate permitted by law;

(d) Judgment be entered that Munchkin's infringement of the '235 Patent is willful and deliberate, and therefore that kidsme is entitled to treble damages as provided by 35 U.S.C. § 284;

(e) Judgment be entered that Munchkin's infringement of the '235 Patent is willful and deliberate, and, therefore, that this is an exceptional case entitling kidsme to an award of its attorneys' fees for bringing and prosecuting this action, together with interest, and costs of the action, pursuant to 35 U.S.C. § 285; and

(f) Judgment be entered awarding kidsme such other and further relief as this Court may deem just and proper.

Dated: October 7, 2014  
Wilmington, DE

Respectfully submitted,

By: /s/ Marc S. Casarino  
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AO 120 (Rev. 08/10)

<b>TO: Mail Stop 8</b> <b>Director of the U.S. Patent and Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been  
 filed in the U.S. District Court For the District of Delaware on the following

☐ Trademarks or ☒ Patents. ( ☐ the patent action involves 35 U.S.C. § 292.):

DOCKET NO.	DATE FILED 10/7/2014	U.S. DISTRICT COURT For the District of Delaware
PLAINTIFF Dongguan Kidsme Industrial Ltd.		DEFENDANT Munchkin, Inc.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 8597235	12/3/2013	Dongguan Kidsme Industrial Ltd.
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In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK	(BY) DEPUTY CLERK	DATE
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Copy 1—Upon initiation of action, mail this copy to Director    Copy 3—Upon termination of action, mail this copy to Director  
 Copy 2—Upon filing document adding patent(s), mail this copy to Director    Copy 4—Case file copy